IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

FRIDAY, THE 7TH DECEMBER 2007 / 16TH AGRAHAYANA 1929

O.P.No. 22488 of 2002 (B)

PETITIONERS:

1. M.K.DEVARAJA KURUP,
S/O.N.KRISHNA KURUP, AGED 39 YEARS,
I-GRADE OVERSEER, KERALA AGRICULTURAL
UNIVERSITY, ENGINEERING DIVISION,
PANANGAD.

2. K.K.ANILAN, S/O.KOCHAKKAN,
I-GRADE OVERSEER, KERALA AGRICULTURAL
UNIVERSITY, ENGINEERING SUB DIVISION,
MANNUTHY

3. K.G.AJITHKUMAR, S/O.GOPALAN,
I-GRADE OVERSEER, KERALA AGRICULTURAL
UNIVERSITY, DIRECTORATE OF PHYSICAL PLANT,
VELLANIKKARA, TRICHUR.

4. K.H.ABDUL RAHIMAN, S/O.HYDROSEKUTTY,
I-GRADE OVERSEER, KERALA AGRICULTURAL
UNIVERSITY, ENGINEERING SUB DIVISION,
VELLANIKKARA, TRICHUR.

BY ADV. SRI.BABU JOSEPH KURUVATHAZHA

RESPONDENTS:

1. KERALA AGRICULTURAL UNIVERSITY REP.BY
ITS REGISTRAR, ADMINISTRATIVE OFFICE OF THE
KERALA AGRICULTURAL UNIVERSITY,
VELLANIKKARA, TRICHUR DISTRICT.

2. THE EXECUTIVE COMMITTEE OF THE KERALA
AGRICULTURAL UNIVERSITY REP. BY ITS CHAIRMAN,
THE VICE CHANCELLOR OF THE KERALA
AGRICULTURAL UNIVERSITY, OFFICE OF THE KERALA
AGRICULTURAL UNIVERSITY, VELLANIKKARA,
TRICHUR DISTRICT.

3. K.M.ANILKUMAR, I-GRADE OVERSEER,
KERALA AGRICULTURAL UNIVERSITY,
DIRECTORATE OF PHYSICAL PLANT,
VELLANIKKARA, TRICHUR DISTRICT.

4. P.MANOJ, WORKING AS ASSISTANT ENGINEER,
KERALA AGRICULTURAL UNIVERSITY, ENGINEERING
DIVISION, KELAPPAJI COLLEGE OF AGRICULTURAL
ENGINEERING & TECHNOLOGY, TAVANNUR,
MALAPPURAM DISTRICT.

BY ADV. SRI.RANJITH THAMPAN, SC, AGRL.UNTY.
DR.K.P.KYLASANATHA PILLAY
SMT.SREEDEVI KYLASANATH
SRI.ARUN.B.VARGHESE
SRI.P.CHADRASEKHAR

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 07/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.No. 22488 of 2002 (B)

ORDER ON C.M.P.Nos.38538, 58073, 58072 OF 2002 &
I.A.NoS.15833, 15832 OF 2003 IN O.P.NO.22488/02

Dismissed.

Sd/-
7-12-2007 A.K.BASHEER, JUDGE

APPENDIX

PETITIONER'S EXHIBITS:

Ext.P1: True copy of the order bearing No.GA/A3/44369/92 dated Vellanikkara 26-12-1992 issued by the 1st respondent.

Ext.P2: True copy of the letter No.G.O.(P)No.780/83/Fin. dated 16th December, 1983 from the Govt. of Kerala, Trivandrum to DMOH, Cannanore.

Ext.P3: True copy of the order bearing No.GA/A3/449182001 Vellanikkara dated 13.12.2001 issued by the 1st respondent.

Ext.P4: True copy of the Circular No.GA/A3/7318/2000 (ii) dated 14.6.2000 issued on behalf of the 1st respondent.

Ext.P5: True copy of the representation dated 10.6.2000 filed by the petitioner before the 1st respondent.

Ext.P6: True copy of the representation filed by the 1st petitioner before the 1st respondent dated 30.7.2002.

// True copy // P.A. to Judge

A.K.BASHEER, J.

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O.P.No.22488 OF 2002

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Dated this the 7th day of December 2007

JUDGMENT

Petitioners are working as Overseer Grade I in Kerala Agricultural University. Their grievance is that the University has ignored the period spent by respondents 3 and 4 on leave without allowance while reckoning their seniority in service. In other words, the contention is that the periods spent by respondents 3 and 4 on leave without allowance as provided under Appendix-XII A of the Kerala Service Rule is liable to be deducted from the eligible length of service while reckoning service seniority.

2. Petitioners had joined the service of the University in October 1988 as Overseer Grade II. They were promoted as Overseer Grade I in 1993. It is not in dispute that respondent No.3 had joined service in the year 1988 and his probation was declared in the year 1989. He had availed of leave without allowance with effect from April 6, 1993. He rejoined service on December 13, 2001. At the time of filing the

original petition, he was not promoted as Assistant Engineer, the next cadre of promotion. But later he got promotion with effect from February 25, 2004.

3. Respondent no.4 joined service in the year 1991. His probation was declared in February 1993. He had availed of leave without allowance from January 4, 1997 to September 9, 1999. He rejoined duty on September 10, 1999 and he was promoted as Assistant Engineer on April 15, 2000.

4. The contention of the petitioners is that if the period spent by respondents 3 and 4 on leave is deducted from the total period of service, they will not be eligible for promotion to the cadre of Assistant Engineer. Curiously, petitioners do not have a case that they have been denied promotion to the cadre of Assistant Engineer as and when they became eligible for promotion.

5. But obviously the attempt of the petitioners appears to be to get accelerated promotion in case respondents 3 and 4 are not considered for promotion as Assistant Engineer. In fact there is a prayer to revert respondent no.4 from the cadre

of Assistant Engineer. Petitioners have produced Ext.P4, provisional seniority list in which respondent no.3 is placed at Sl.No.1 and respondent no.4 is placed at Sl.No.5. Petitioners are far below in the said provisional seniority list. It is contended by the petitioners that Ext.P4 list was published on June 14, 2000. They had not raised any objection with regard to the provisional seniority list.

6. This original petition was filed in the year 2002 and even in this original petition they did not challenge Ext.P4 seniority list nor have they raised any objection against it departmentally. The prayers made by the petitioners are apparently misconceived and untenable. Moreover, a Division Bench of this court in Krishna **Warrier V. Devendran [2005 (4) KLT sn.51] (case No.66)** has held that the leave granted to an employee under Appendix-XII A KSR will only affect his right to get promotion which falls due during the period of such leave. It may further have an impact on reckoning his seniority over those juniors who were promoted while he was on leave. The Division Bench further held that the seniority in

the cadre in which the employee concerned had availed leave, will have to be computed based on Rule 27 of the General Rules in KS & SSR.

Having regard to the entire facts and circumstances, I have no hesitation to hold that the petitioners are not entitled to get any relief in the original petition. Therefore, the original petition is dismissed.

(A.K.BASHEER, JUDGE)

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A.K.BASHEER, J.

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O.P.No.22488 OF 2002
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JUDGMENT

Dated 7th Dec. 2007